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10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12 SAN FRANCISCO DIVISION

13 UNITED STATES OF AMERICA,	) CASE NO. CR 15-00324 VC
14 Plaintiff,	) MODIFIED [PROPOSED] ORDER FINDING
15 v.	) WAIVER OF PRIVILEGE, ALLOWING DEFENSE
16 DARIUS GILBERT,	) COUNSEL TO DISCUSS PETITIONER'S CLAIMS
17 Defendant.	) WITH THE GOVERNMENT AND TO PROVIDE
	) DECLARATION TO THE COURT, AND
	) EXTENDING THE TIME FOR THE
	) GOVERNMENT TO RESPOND TO
	) DEFENDANT'S MOTION TO VACATE HIS
	) CONVICTION AND SENTENCE PURSUANT TO
	) 28 U.S.C. § 2255

21 Good cause appearing, the Court hereby finds that the petitioner's motion to vacate his
22 conviction and sentence filed pursuant to 28 U.S.C. § 2255 waived the attorney-client privilege between
23 the petitioner and defense counsel Candis Mitchell with regard to claims related to ineffective assistance
24 of counsel during the plea process and regarding the petitioner's desire to file an appeal. IT IS
25 HEREBY ORDERED that defense counsel Candis Mitchell may discuss with the government the claims
26 related to the ineffective assistance of counsel raised in the petitioner's § 2255 motion and may file a
27 declaration with the Court detailing the conversations pertaining to her advice and counsel to the
28 petitioner during the plea process and concerning an appeal. [The government is precluded from using](#)

1 the information and materials provided by Mitchell for any purpose other than litigating the § 2255
2 motion currently at issue, and may not disclose the information and materials provided by Mitchell to
3 anyone other than the representatives of the U.S. Attorney's Office assisting with this § 2255 motion.
4 *See Lambright v. Ryan*, 698 F.3d 808, 818-19 (9th Cir. 2012). Should Gilbert wish to avoid the limited
5 waiver of the attorney-client privilege necessitated by his petition, he may withdraw his § 2255 petition.
6 *See Bittaker v. Woodford*, 331 F.3d 715, 721 (9th Cir. 2003) (en banc).

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8 IT IS FURTHER ORDERED that the government's time to respond to the petitioner's motion to
9 vacate his conviction and sentence filed pursuant to 28 U.S.C. § 2255 is hereby extended by 45 days to
10 November 3, 2017.

11 IT IS SO ORDERED

12
13 Dated: September 18, 2017



HON. VINCE CHHABRIA
UNITED STATES DISTRICT JUDGE